



# The Klamath Tribes

**Opening Statement of Donald C. Gentry, Chairman of the Klamath Tribes**

**In Support of S.2379 — The Klamath Basin Water Recovery and  
Economic Restoration Act of 2014**

**Before the Subcommittee on Water and Power,  
Committee on Energy and Natural Resources, United States Senate**

**June 3, 2014**

Chairman Schatz, Senator Wyden, and members of the Committee, my name is Don Gentry and I am the Chairman of the Klamath Tribes. I want to thank the Subcommittee for convening this hearing and for the invitation to present testimony. Also, I want to thank Senators Wyden, Merkley, Boxer, and Feinstein, for introducing Senate Bill 2379, the Klamath Basin Water Recovery and Economic Restoration Act of 2014. As Chairman of the Klamath Tribes, it is my honor to convey to the Subcommittee the views of the Klamath Tribes in support of this critical piece of legislation.

I represent the people of the Klamath Tribes, which is comprised of three historically distinct tribes: the Klamath, Modoc, and the Yahooskin Band of Snake Indians. In 1864, our respective leaders entered into a Treaty with the United States. Through the Treaty our ancestors reserved to us, with the complete agreement of the United States, water rights that we have held since time immemorial. While we ceded other lands and rights to the United States for the benefit of its citizens, through the Treaty we reserved our water rights for hunting, fishing, gathering, and trapping. Treaty resources are essential to the Klamath. In addition to providing for our subsistence, treaty resources are central to our ability to maintain and exercise our cultural and spiritual practices, which are critical to the physical and social health of our families and community. Without our treaty resources, like the endangered c'waam (also known as the Lost River sucker), or ci'aals (salmon), which have been denied migration to our homeland by the Klamath River dams for nearly 100 years, we simply do not have the ability to live as Klamath People in the way our Creator intended. We have an inherent responsibility to restore and steward these resources, for our current 4,444 members and future generations.

Decades of failed federal and state policies have over-promised water resources across a diverse set of groups in the Klamath Basin and fueled decades of conflict. These failed water policies have already extirpated treaty resources and brought the remnant of our treaty-protected fisheries to the brink of collapse. But with the enactment of S.2379, the Basin is poised to correct these devastating policies, address the complex problems affecting our treaty resources, and lay the foundation for a brighter, sustainable, future for our tribal community and the broader Klamath Basin community.

To understand why we are here at this point today, it is always important to reflect on our history. The Klamath Tribes once occupied a vast territory of 22 million acres of what is now southern Oregon and northern California. In the Treaty of 1864, we ceded much of this land to the United States, but reserved to ourselves 2.2 million acres of land, encompassing the entire Upper Klamath River Basin above Upper Klamath Lake. However, in the decades that followed, fraudulent surveys and devastating federal policies chipped away at our lands until, finally, the Termination Act of 1954 terminated our federally recognized Tribal status. Termination also brought the loss of our ancestral lands reserved through the Treaty, which now make up a significant portion of the Winema and Fremont National Forests. This abrupt loss of our forest-based Tribal economy was not only devastating to our people, it devastated the local Klamath Basin economy as well. At the time of termination, the Klamath Tribes was among the most prosperous Tribal Nations in the United States. Ironically and brutally, termination of the Klamath Tribes, which was allegedly based on our social and economic success, deprived us of the land base that was at the heart of that success. Predictably, termination precipitated severe economic and social devastation from which we are still struggling to recover.

The United States acknowledged the failure of the termination policy in the 1970s and our Tribal leaders led us through the maze of legal, political and social challenges necessary to restore our federally recognized status in 1986. Unfortunately, the restoration of that government-to-government relationship did not include the return of our ancestral lands even though the federal government's timber receipts on those lands had already exceeded their purchase price. Nor did federal recognition re-start our forest-based economy or heal social ills wrought by termination. To date the Tribes have reacquired only about 1,000 acres in scattered parcels.

As courts have repeatedly recognized, although our land was taken from us, we have continuously retained our rights to hunt, fish, gather and trap on our former reservation lands. However, over the past 150 years, governments other than the Klamath Tribes have implemented policies that over-allocated the Basin's limited water resources and ignored the Tribes' time immemorial water rights. These development policies primarily focused on out-of-stream water uses. Vast tracts of wetlands and even lakes were diked, drained, and transformed to farmland. Floodplains of our major river systems were developed for agricultural uses and hydropower dams were constructed on the Klamath River. Upper Klamath Lake was put to work as the primary reservoir serving the needs of agriculture and hydropower. These developments enabled robust non-tribal economies to develop and thrive utilizing the water resources of the Upper Basin.

The Klamath Tribes have borne many severe costs associated with developing the Basin, but have received few of the benefits. Our salmon and steelhead runs were completely wiped out when the first Klamath Hydroelectric Project dam was built in 1917. Additionally, the resulting

changes in the hydrology of Upper Klamath Lake and its tributaries damaged other Treaty-protected fisheries. Loss of wetlands and riparian ecosystems, along with other land use changes have impaired water quality so severely that the two lake-dwelling sucker species - some of the toughest fish, and once among the most abundant fish in the Basin - have been pushed to the brink of extinction. Additional treaty resources such as plants, wildlife and waterfowl are imperiled as well.

Meanwhile, PacifiCorp shareholders and rate-payers have continuously benefited from the electricity produced by the dams that destroyed these fisheries. We have not fished for the endangered c'waam and koptu (Lost River and shortnose suckers) since 1986, while irrigated crops and livestock have been raised and sold each year from agricultural operations that depend on water from our rivers and lakes, and contribute to excessive nutrient loading that compromises ecosystem health. These fisheries sustained our people for millennia, but a mere century of development threatens their continued existence, and now, after centuries of harvesting tens of thousands of fish, we are restricted to two fish each year for ceremonial purposes.

In recent years, it has been difficult for our non-tribal neighbors as well. Failed policies and the poor management of the Basin have fueled decades of crisis, catastrophes and conflict. Over-allocation of water resources has resulted in acrimonious competition and constant tension surrounding resources and water management decisions. Among the demands for limited resources are the water levels in Upper Klamath Lake necessary to support the c'waam and koptu sucker fisheries, irrigation deliveries to the Klamath Reclamation Project farmers, flows in the Klamath River below Iron Gate Dam for coho, deliveries to the Tule Lake and Lower Klamath Wildlife Refuges, and off-Project agricultural and ranching. There is simply not enough water to fulfill all of these demands at the necessary levels.

The disastrous effects have been real and concrete. There have been devastating fish kills in the Klamath River and near collapse of these fisheries. Low water levels in Upper Klamath Lake and low flows in Klamath River also resulted in an almost complete cessation of water deliveries to the Klamath Irrigation Project, eventually leading to \$40 million in disaster relief funding for irrigators.

In 2006, the perilous condition of Klamath Chinook salmon stocks precipitated severe restrictions on ocean salmon harvest along the Pacific coast. This was catastrophic for coastal communities and even more disaster relief funds had to be dispersed because there was no management plan in place for the Basin.

Hundreds of millions of dollars has been spent in federal and state disaster relief resulting from closed fisheries and losses to farmers and ranchers. Clearly, the status quo is costly to the federal government, states, local economies, tribes and families. We now have a historic opportunity to put these conflicts and catastrophes behind us. After years of contentious litigation, many of us in the Basin realized that a collaborative approach was necessary and began negotiations. These negotiations led to the delicate balance of needs and compromises within the Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydroelectric Settlement Agreement (KHSA). The Klamath Tribes General Council, which is composed of the eligible enrolled members and is

the governing body of the Tribes, by referendum vote, approved the KBRA and KHSa in 2010, and the amendments to these agreements in 2012.

The Agreements strongly emphasize ecosystem restoration, reintroduction of salmon and steelhead, equitable distribution of limited water resources and economic development. For the first time, energy and resources will flow to solve the foundational problems.

Key elements of these agreements for the Klamath Tribes include:

- Removal of the lower four dams on the Klamath River, including the Iron Gate, Copco 1, Copco 2 and J.C. Boyle dams.
- Funding to the Klamath Tribes for (1) aquatics and uplands management, (2) the implementation of specific ecosystem restoration and monitoring projects, and (3) economic development studies.
- Decreasing and capping use of water within the Klamath Reclamation Project, while also providing predictability for Project farmers.
- Tribal land restoration of 90,000 acres known as the Mazama Forest.

This last point is essential. Like the other settlement parties we seek economic stability, but it will be decades before the Klamath Tribes will see the full benefit to our fisheries stemming from dam removal and the restoration and reintroduction activities. Therefore, one of our key bargained-for benefits in the KBRA is re-acquisition of former reservation lands, the 90,000-acre Mazama Forest. Tribal ownership of this tract will put both Tribal members and non-Indian people to work in forest products, one of the area's traditional economies. Our development plans revolve around green energy production closely linked to improved forest health and reduced danger of catastrophic wildfire. Reacquisition by the Klamath Tribes of the Mazama Forest not only begins to restore the Tribes' land-base and homeland, it begins to create acceptable parity among KBRA participants, establishing a balance that enables the Klamath Tribes to agree to other core elements of the KBRA.

While the KBRA and KHSa represented a giant step forward toward healing the Basin, more work remained. Senator Wyden joined with Senator Merkley, Congressman Greg Walden, and Governor John Kitzhaber, calling for the creation of a Klamath Basin Task Force comprised of the various stakeholders. Recognizing the shortcomings of litigation, the Klamath Tribes pursued settlement opportunities that could address more than water quantity and began negotiations with the Upper Basin irrigators, the State of Oregon, and the United States to resolve Upper Basin water issues as contemplated in the KBRA. Consequently, we set aside our differences and found the common ground to reach the Upper Klamath Basin Comprehensive Settlement Agreement (UBA). The Klamath Tribes General Council approved, by referendum vote, the UBA, which I signed on April 18, 2014. This was an extremely difficult decision for the General Council in part because of the immense time pressures associated with the accelerated negotiation schedule and the legislative process we now face. With that understanding, I am confident, however, that when Congress enacts S.2379 into law and as we begin to implement these historic agreements the Klamath Basin will continue the healing

process and these agreements will provide a foundation upon which the Klamath Tribes can achieve our goals.

In short, the UBA enables the Klamath Tribes to design programs to improve riparian habitat and water quality, support existing fish populations, enable restoration and reintroduction of salmon and steelhead, and provide a foundation for Tribal economic development, while resolving litigation among agreement parties.

Specifically, the UBA meets the following Tribal goals:

- **Goal 1. Broaden support for the enactment of the KBRA and KHSa.**
- **Goal 2. Permanent improvement of in-stream flows protected by the Tribes' time-immemorial in-stream water rights.**
- **Goal 3. Resolution of Klamath Basin Adjudication claims and contests.**
- **Goal 4. Restored, functional aquatic ecosystems.**
- **Goal 5. Restored abundance of treaty resources, and opportunities for harvest.**
- **Goal 6. Support for the Tribal economy through reacquisition of former reservation lands and forest health restoration.**

Like the other parties, the Klamath Tribes had to compromise to reach this important milestone. For instance, in exchange for the benefits flowing to the Tribes under these agreements, we agreed to forgo breach of trust claims against the United States if all the terms of the Agreements are satisfied. Although we hold the most senior water rights in the Basin, we agreed to share in the shortages with our neighbors. We saw these as necessary steps to fulfill our duty to the future generations of Klamath People, so that they may have economic opportunities and know the fish as well as our other treaty resources that form the basis of our Klamath culture and way of life.

The Klamath Tribes will be paying close attention as this legislation as it moves forward. We expect that Congress will respect the hard-fought negotiations and the agreements the parties have reached, but our history shows that we can never take that for granted. We will be monitoring the legislative process to ensure that the Klamath Tribes' bargained-for benefits remain intact. As directed by the Klamath Tribes General Council, one condition critical to the UBA becoming final is that the Klamath Tribes must review the final legislation and notify the Secretary of Interior that the legislation is "materially consistent" with the UBA. If the legislation is not materially consistent with the UBA, the agreement may be terminated, a situation that would be bad for all parties.

Should Congress fail to enact legislation implementing the three Klamath Agreements, such inaction will only guarantee continuing conflict, economic calamity, and more of the types of disasters that have already cost the federal government more than \$100 million in short-term

relief. Parties to the Klamath Agreements have worked hard to develop a locally-based, consensus solution that resolves the fundamental problems associated with the Basin's limited supply of water. It is imperative that Congress act quickly, as the delicate balance of bargained-for benefits negotiated in the compendium of Klamath Agreements needs to begin before they either expire or wane under their own weight.

This concludes my opening statement. At this time I request that my testimony be entered into the record. It is my understanding that the hearing record will remain open for an additional two weeks so that the Klamath Tribes may submit additional written comments in support of this legislation and respond to any question raised in today's hearing.

Chairman Schatz and Senator Wyden, I thank you, the Committee, and your staff for the efforts to restore the Klamath Basin and for holding this hearing. I welcome any questions you may have.